

## ARTICLE VI

### EXCEPTIONS AND MODIFICATIONS

#### SECTION

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6.010. Scope. ARTICLE VI, of this ordinance, is devoted to providing for the necessary exceptions and modifications to the specific zoning district provisions and the supplementary provisions provided in ARTICLE IV and ARTICLE V.

6.020. Nonconforming uses. This districts established in this ordinance (as set forth in district regulations in ARTICLE V) are designed to guide the future use of land in Kingston Springs, Tennessee, by encouraging the development of desirable residential, commercial, and industrial areas with appropriate groupings of compatible, and related uses and thus promote and protect the public health, safety, and general welfare.

As a necessary corollary, in order to carry out such purposes, nonconforming uses which adversely affect the development of such areas must be subject to certain limitations. The provisions governing nonconforming uses set forth in this Article are therefore established to contain the existing undesirable conditions resulting from such incompatible nonconforming uses, which are detrimental to the achievement of such purposes. While such uses are generally permitted to continue, this ordinance is designed to restrict any expansion of such uses beyond the site which the use occupied upon the effective date of this ordinance.

In the case of buildings or other structures not complying with the bulk regulations of this ordinance, the provisions governing noncomplying buildings or other structures set forth in this article are established in order to permit the continued use of such buildings or other structures, but to limit the creation of additional noncompliance or increase in the degree of noncompliance.

These provisions are thus designed to preserve the character of the districts established in this ordinance in light of their suitability to particular uses, and thus to promote the public health, safety, and general welfare.

6.021. Provisions Governing Nonconforming Uses. Applicability. The provisions of this article are applicable to all uses which are not permitted within the districts in which they are located. Additionally, buildings and other structures located within the floodplain are considered within the regulations of nonconforming uses.

6.022. Construction or Use Permit Approved Prior to Ordinance Adoption. Nothing contained herein shall require any change in the overall layout, plans, construction, site or designated use of any development, building, structure, or part thereof where official approvals and required building permits have been granted before the enactment of this ordinance, or any amendment thereto, the construction of which, conforming with such plans, shall have been started prior to the effective date of this ordinance and completion thereof carried on in a normal manner within the subsequent six (6) months period, and not discontinued until completion except for reasons beyond the builder's control.

In the event that the activity or construction of such building or other structures is not substantially underway and being diligently pursued within the six (6) month period following the issuance of a building permit, then such permit shall automatically lapse and the provisions of this ordinance shall apply.

6.023. Repairs and Alterations Nothing in this Article shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by proper authority.

6.024. Zone Lot Containing Nonconforming Use. A zone lot containing a nonconforming use shall not be reduced in area except to comply with Section 6.023.

6.025. Continuation of Nonconforming Use. Any nonconforming use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be allowed to continue in operation and be permitted provided that no change in use (See Section 6.026) is undertaken.

6.026. Change of Nonconforming Use.

6.026.1. General Provisions. For the purpose of this article, a change in use is a change to another use either under the same activity type or any other activity type or major class of activity; however, a change in occupancy or ownership shall not, by itself, constitute a change of use.

A nonconforming use may be changed to any conforming use, and the applicable bulk regulations and accessory off-street parking requirements shall apply to such change of use or to alterations made in order to accommodate such conforming use.

6.026.2. Land with Incidental Improvements. In all districts a nonconforming use of land, not involving a building or structure, or in connection with which any building or structure thereon is incidental or accessory to the principal use of the land, shall be changed only to a conforming use.

6.026.3. Nonconforming to Conforming Use. Whenever a nonconforming use is changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.

6.027. Expansion of Nonconforming Uses

6.027.1. General Provisions. Any nonconforming use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be allowed to expand operations and construct additional facilities

which involve an actual continuance and expansion of the nonconforming use provided that any such expansion shall not violate the provisions as set out below.

6.027.2. Land with Incidental Improvements. In all districts a nonconforming use of land, not involving a building or structure, or in connection with which any building or structure thereon is incidental or accessory to the principal use of the land, shall not be allowed to expand through the addition of buildings or other structures.

6.027.3. Adequate Space for Expansion. No expansion or any nonconforming use shall infringe upon, or increase the extent of any infringement existing at the time of adoption of this ordinance, upon any open space required by this ordinance.

6.027.4. Expansion Limited. Any expansion of a nonconforming use permitted under the provisions of this section shall take place only upon the zone lot(s) on which said use was operating at the time the use became nonconforming. Nothing within this provision shall be construed so as to permit expansion of any nonconforming use through the acquisition and development of additional land.

6.027.5. Expansion Upon Land Subject to Flood. No expansion of any nonconforming use shall violate the provisions of Section 6.030.

#### 6.028. Damage or Destruction

6.028.1. General Provisions. Any nonconforming use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be permitted to reconstruct damaged or destroyed facilities which involve any actual continuance of the nonconforming use provided that any such reconstruction shall not violate the provisions set out below.

6.028.2. Change in Use Prohibited. No reconstruction of damaged or destroyed facilities may occur which shall act to change the nonconforming use (as regulated in Section 6.026, above) to other than a permitted use.

6.028.3. Land With Incidental Improvements. In all districts, when a nonconforming building or other structure or improvements located on "land with incidental improvements" (as defined by this ordinance) is damaged or destroyed to the extent of twenty-five (25) percent or more of the assessed valuation of all buildings, and other structure or other improvements located thereon (as determined from the assessment rolls effective on the date of damage or destruction), such nonconforming use shall terminate and the tract of land shall therefore be used only for a conforming use.

6.028.4. Infringement Upon Open Space Restricted. No reconstruction of damaged or destroyed facilities utilized by a nonconforming use shall increase the extent of any infringement upon any open space required by this ordinance.

6.028.5. Reconstruction of Flood Damaged Property. The provisions of Section 6.030, shall apply to the reconstruction of all buildings and structures associated with any nonconforming use located within floodway district.

6.029. Discontinuance. When a nonconforming use of land or the active operation of substantially all the nonconforming uses in any building or other structure or tract of land is discontinued for a period of one (1) year, then the land or building or other structure shall thereafter be used only for conforming use. Intent to resume active operations shall not affect the foregoing provision.

6.030. Special Provisions Governing Nonconforming Buildings Within Floodway District.

6.030.1. General Provisions. In all districts or portions thereof which extend into the floodway districts as established by Section 5.054, any building or other structure or use which is not permitted by the floodway district provisions shall become nonconforming upon the effective date of this ordinance, or subsequent amendment as applicable.

6.030.2. Enlargement of Buildings Within the Floodway. A building or other structure which is nonconforming by reason of location within the floodway shall not be enlarged or expanded but may be altered, or repaired as set forth in Section 6.023, or as may be expressly authorized by the Board of Zoning Appeals in order to incorporate flood-proofing measures provided that such alteration will not increase the level of the 100-year flood or extend the normal life of such nonconforming building or structure.

6.030.3. Special Provisions Governing Reconstruction of Building or Structure Located within the Floodway District. Within the floodway district any building or structure in existence prior to the effective date of this ordinance that is hereafter destroyed or substantially damaged by any means may be reconstructed and used as before only if the following requirements are met.

- (A) The reconstruction does not exceed the volume and external dimensions of the original structure or does not offer any greater obstruction to the flow of floodwaters than did not original structure.
- (B) Nonresidential structures may be reconstructed only if the lowest flood (including basement) elevation is at least one (1) foot above the level of the 100-year flood or the structure is floodproofed (in accordance with the requirements of Section 4.100, to a height of at least one (1) foot above the level of the 100-year flood).
- (C) Residential structures may be reconstructed only if the lowest flood (including basement) of the structure is elevated to a point at least one (1) foot above the level of the 100-year flood.
- (D) That no reconstruction or alteration permitted herein under shall result in any increase in the level of the 100-year flood.

6.040. Bulk and Lot Size Noncompliance.

6.040.1. General Provisions. The provisions of this article shall control buildings and other structures which do not meet the bulk or any other provisions applicable in the districts in which they are located except those provisions which pertain to activity or use.

6.040.2. Continuation of Use. The use of a noncomplying building or other structure or parcel may be continued, except as otherwise provided by this article.

6.040.3. Repairs and Alterations. Repairs, incidental alterations, or structural alterations may be made in noncomplying buildings or other structures subject to the provisions of Section 6.040.4 through 6.040.6.

6.040.4. Enlargements or Conversions. A noncomplying building or other structure may be enlarged or converted, provided that no enlargement or conversion may be made which would either create a new noncompliance or increase the degree of noncompliance of any portion of a building or other structure or parcel.

6.040.5. Buildings Noncomplying as to Lot Area. If a building does not comply with the applicable district regulations on lot area per dwelling unit (lot area being smaller than required for the number of dwelling units on such zone lot) such building may be converted (except when in the floodway district), provided that the deficiency in the required lot area is not thereby increased (for example, a noncomplying building on a lot of 3,500 square feet, which before conversion required a lot area of 5,000 square feet and was, therefore, deficient by 1,500 square feet, can be converted into any combination of dwelling units allowed in the zoning district in question requiring a lot area of no more than 5,000 square feet).

6.040.6. Damage or Destruction of Noncomplying Uses. A noncomplying building which is damaged or destroyed may be reconstructed, provided that the reconstruction will not either create a new noncompliance or increase the degree of noncompliance of a building or structure or parcel or portion thereof.

6.050. Exceptions to Height Limitations. The height limitations of this ordinance shall not apply to church spires, belfries, cupolas and domes not intended for human occupancy; monuments, water towers, transmission towers, windmills, chimneys, smokestacks, conveyors, flag poles, radio towers, masts and aerials.

6.060. Lots of Record. The following provisions shall apply to all existing lots of record:

- A. Where the owner of a lot consisting of one or more adjacent lots of official record at the time of the adoption of this ordinance does not own sufficient land to enable him to conform to the yard or other requirements of this ordinance, an application may be submitted to the Board of Zoning Appeals for a variance from the terms of this ordinance. Such lot may be used as a building site, provided, however, that the yard and other requirements of the district are complied with as closely as in the opinion of the Board of Zoning Appeals is possible.
- B. No lot which is now or hereafter built upon shall be so reduced in area that the yards and open space will be smaller than prescribed by this ordinance, and no yard, court, or open space provided around any building for the purpose of complying with the provisions hereof, shall again be considered as a yard, court, or other open space for another building.
- C. Where two or more lots of record with a continuous frontage are under the same ownership, or where a substandard lot of record has continuous frontage with a larger tract under the same ownership, such lots shall be combined to form one or more building sites meeting the minimum requirements of the district in which they are located.

6.070. Exceptions to Setback Requirements. The front setback requirement of this ordinance for dwellings shall not apply to any lot where the average depth of existing setbacks on the developed lots located within one hundred (100) feet on each side of such lot is less than the minimum required front yard depth. In such cases, the front yard setback may be less than required but not less than the average of the existing depth for front yards on developed lots within one hundred (100) feet on each side of the lot. In residential districts, however, the setback shall in no case be less than fifteen (15) feet from the street right-of-way line.

6.080. Absolute Minimum Lot Size. In no case shall the Building Inspector or the Board of Zoning Appeals permit any zone lot in a residential district to be used as building site which is less than six thousand (6,000) square feet in total area and thirty (30) feet in width at its narrowest point, or has a front setback of less than fifteen (15) feet and a side setback of less than five (5) feet.

6.090. Zero Lot Line Duplex Requirements. Zero lot line duplex dwellings shall be subject to the following requirements:

6.090.1. Density Requirements. The density of the development permitted shall be determined by dividing the gross site, less streets, by the lot area required in an R-2 or R-3 District, for a duplex or two-family structure or building type.

6.090.2. Parcel (Fee-Simple Lot) Requirements Area and Width Requirements. The Lot area and lot width of any parcel (fee-simple lot) may be variable provided that no parcel shall be created which contains less than one half (1/2) of the required lot area per structure of building type as stipulated in 6.090.1, above. In no case shall an individual parcel be created which contains less than an absolute minimum of 6,000 square feet, or a lot width at the building setback line of less than 75 feet.

A. Coverage Requirements

On any individual parcel of land, the area occupied by all buildings or structures thereon including accessory structures if any, shall not exceed thirty-five (35) percent of said parcel. All accessory structures shall be governed by the provisions of Section 3.100 and Section 5.051.2, B, 4, or 5.051.3, B, 6, of the zoning ordinance.

B. Front, Rear, and Side Yard Requirements

The front and rear yard setback requirements shall be as specified in the R-2 and R-3 Zoning Districts of the zoning ordinance. Where required, side yard setbacks per each building type shall also follow the R-2 and R-3 Zoning District Regulations. Such side yard setbacks are required at the end of each individual building or structure located within the development.

C. Height Requirements

All developments utilizing zero side yards shall follow the height requirements cited in Sections 5.051.2 (E)(4) or 5.051.3 (E)(4).

6.090.3. Other Development Requirements.

1. The exterior material of zero lot line dwellings shall be of such type and quality that they do not create an adverse effect on adjacent dwellings.



2. The side yard setbacks may be zero on any parcel provided that the parcel adjacent to that side yard is held under the same ownership at the time of initial construction.
3. No zero side yard shall be adjacent to any public or private right-of-way, nor shall it be adjacent to any parcel of land not being approved by the Board of Zoning Appeals for a zero side yard development.
4. No portion of a dwelling or architectural features of a structure shall project over any property line.
5. Where the same interior property line is utilized for the zero side yard construction of any dividing structures or walls, such dividing structures shall consist of double walls separated by a minimum air space of two (2) inches.
6. Where the same interior property line is utilized for the construction of any zero side yard structures or walls, all the provisions of the Southern Standard Building Code shall be met, and all such fire walls shall have a rating as required by the Kingston Springs Fire Department.
7. All residential structures or building types must contain a fire wall between the various dwelling units, from the footing to the peak of the roof of not less than two hours fire rating. The fire wall must be bisected by a line dividing each dwelling unit so that one-half of the fire wall is on each parcel.

#### 6.090.4. Parking and Access Requirements.

1. There shall be two (2) parking spaces per individual parcel (fee simple lot) subdivided, and special attention shall be directed to providing the required spaces in a manner which will minimize points of access onto the public road serving the development.
2. Every dwelling unit shall be located on a parcel fronting or adjacent to a public street. All structures shall be so located on the various parcels so as to provide safe, convenient access for the provision of adequate fire protection to such parcels.

6.090.5. Utilities Requirements. All zero side yard residential developments shall be served by public water. Sanitary (public) sewer services shall be utilized whenever possible. If a zero lot line development is to be served by means of private, subsurface disposal systems approved by the Cheatham County Health Department, each parcel (fee simple lot) must contain its own individual septic tank and drainfield. Each parcel shall be served by separate utilities, and when served by or private, subsurface sewerage disposal system, each parcel (fee simple lot) shall contain a minimum of 20,000 square feet.

6.090.6. Location Requirements. In authorizing any development anticipated herein, as well as fully considering the criteria cited in Section 7.060, of the zoning ordinance, the Board of Zoning Appeals shall consider:

1. The nature, type, density, etc., of development adjoining and within the immediate vicinity of the proposed activity.
2. The location of the development with regard to major streets, and especially in regards to Kingston Springs' Major Thoroughfare plan.



3. The nearness or reasonable availability of all public utilities (specifically including public sewer).
4. The adequacy of fire protection facilities.
5. The adequacy of deed covenants designed to assure protection of potential purchasers, surrounding owners, and the community at large.

6.090.7. Contents of Deed Covenants. At the time of presentation of any final plat involving use of the procedure contained within this section, deed covenants shall also be prepared, presented and recorded which at a minimum provide:

1. An agreement covering the status, including the ownership, maintenance, etc., of the common wall separating the units.
2. Adequate language to assure proper maintenance, etc., of any portion of the structure where maintenance must be shared (ex. common roof).

If the correction of a maintenance problem incurred in the dwelling unit on one parcel necessitates construction work or access on the dwelling unit of the other parcel, either parcel owner shall have an easement on the property of the other for the purpose of this construction. Each party shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owner to call for a larger contribution from the others under any rule or law requiring liability for negligent or willful acts or omissions.

3. Adequate language to assure that any property divided under this provision shall be continuously subject to the unified plan under which originally approved. Such language shall specifically include clear and precise statements whereby the purchaser is informed that the property may not be used in any manner which would have the effect of negating the unified plan under which original approval was granted and language indicating that the purchaser of any such parcel understands that in no instance will any such parcel be viewed as a separate independent parcel for zoning purposes.
4. Adequate language covering any and all cross easements as are necessary to assure the proper maintenance of all utility services.
5. If a fire wall is destroyed or damaged by fire or other casualty, any owner may restore it and if the other owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owner to call for a larger contribution from the others under any rule or law requiring liability for negligent or willful acts or omissions. Either parcel owner shall have an easement on the property of the other for the purpose of reconstruction and protection of the remaining unity from the elements.

6.090.8. Subdivision Regulations. All the requirements of the Kingston Springs Subdivision Regulations shall be met as well as the granting of a special exception by the Board of Zoning Appeals allowing said zero side yard developments, before the development may qualify as being legally approved.

Preliminary subdivision plats shall designate no more than twenty (20) percent of their lots as zero lot line dwellings. Moreover, both preliminary and final subdivision plats shall designate specific lots as being "zero lot-line developments lots", and the planning commission shall approve these locations.

6.090.9. Requirements for Review and Approval. No development anticipated by the language contained herein shall be undertaken without an express grant of approval by the Board of Zoning Appeals acting under authority granted to the Board for the approval of special exceptions. Moreover, as stated above, the final subdivision plat of the project shall be submitted to and approved by the planning commission, as well as the required review of the entire project as a special exception by the Board of Zoning Appeals under Section 7.060, of the zoning ordinance.